



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/815,944

04/02/2004

Thomas E. Ricciardelli

42186

8910

1609 7590 04/02/2009

ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
1300 19TH STREET, N.W.
SUITE 600
WASHINGTON,, DC 20036

EXAMINER

THOMPSON, CAMIE S

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/815,944
Filing Date: April 02, 2004
Appellant(s): RICCIARDELLI ET AL.

Garrett Davis
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 5, 2008 appealing from the Office action mailed June 5, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The amendment after final rejection filed on 09/05/2008 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|--------------|-------------|---------|
| 2002/0025414 | DESAI ET AL | 02-2002 |
| 5,895,071 | YOUNG ET AL | 01-1999 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 38-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Desai et al., U.S. Pre Grant Publication 2002/0025414.

Desai discloses a material that contains up to 100% recycled material (see paragraph 0006).

Additionally, the reference discloses that the recycled material contains at least one type of thermoplastic material and that the recycled material is obtained from post-consumer products such as waste carpet (see paragraph 0024). Paragraph 0025 of the reference discloses that the backing material is a thermoplastic material and can be polyvinyl chloride and have polyethylene. Desai also discloses that an alkyl phthalate plasticizer (Santicizer Registered™

Art Unit: 1794

160) is present in the matrix/backing material (see paragraph 0026). It is disclosed in paragraph 0032 that the waste carpet is cut up to form pieces with a length of 1/4" to 1/2". Also, it is disclosed in paragraph 0035 that the recycled matrix also comprises face fibers such as polyester fibers dispersed therein. Paragraph 0036 of the Desai reference discloses that the recycled material can be used in any combination with virgin thermoplastic material such as from about 1% weight recycled material to about 100% recycled material alone with about 0% virgin material to about 100% virgin material. Claims 34 and 47 are product-by-process claims. Even though product-by-process are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the product is not patentable even though the product was made by a different process. The manner in which the continuous phase is formed is not given any patentable weight.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 49-58 rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al., U.S. Pre Grant Publication 2002/0025414 in view of Young et al., U.S. Patent Number 5,895,071.

Art Unit: 1794

Desai discloses a material that contains up to 100% recycled material (see paragraph 0006). Additionally, the reference discloses that the recycled material contains at least one type of thermoplastic material and that the recycled material is obtained from post-consumer products such as waste carpet (see paragraph 0024). Paragraph 0025 of the reference discloses that the backing material is a thermoplastic material and can be polyvinyl chloride and have polyethylene. Desai also discloses that an alkyl phthalate plasticizer (Santicizer Registered™ 160) is present in the matrix/backing material (see paragraph 0026). It is disclosed in paragraph 0032 that the waste carpet is cut up to form pieces with a length of 1/4" to 1/2". Also, it is disclosed in paragraph 0035 that the recycled matrix also comprises face fibers such a polyester fibers dispersed therein. Paragraph 0036 of the Desai reference discloses that the recycled material can be used in any combination with virgin thermoplastic material such as from about 1% weight recycled material to about 100% recycled material alone with about 0% virgin material to about 100% virgin material. Desai does not disclose tht the waste carpeting is fed into an extruder.

Young discloses a polymeric blend formed from recycle carpet scrap. It is disclosed in Young that the waste carpet scrap can be fed into an extruder and heated to about 204 degrees in order to melt the carpet blend into a polymeric material. Therefore, it would have been obvious to one of ordinary skill in the art have the Desai reference feed the waste scrap carpet and the second polymer into an extruder and heat the resulting mixture in order to have a polymeric material that is free from thermal degradation.

(10) Response to Argument

Appellant argues that the Desai reference does not disclose either expressly or inherently a continuous phase of a first polymer and a second polymer having carpet fibers dispersed in the continuous phase.

The examiner disagrees for the following reasons: Desai discloses a material that contains up to 100% recycled material. Desai discloses that the backing material is a thermoplastic material and can be comprised of polyvinyl chloride and polyethylene (first and second polymers). It is disclosed in paragraph 0038 that recycled material (thermoplastic material) is fused to form a continuous layer.

Appellant argues that the Desai reference does not disclose a continuous phase of a polymer and carpet fibers. The examiner notes: Paragraph 0035 of the reference discloses that the recycled powder comprises at least one thermoplastic material and face fibers, recycled fibers (see paragraph 0033). Desai discloses that the at least one thermoplastic material and face fibers are fused together to form a **continuous** layer.

Appellant argues that present claim 37 recites the continuous phase of the matrix being formed by melting the polymers. Desai discloses that the at least one thermoplastic material and face fibers are fused together to form a continuous layer. The polymers being fused together define a continuous phase of the first and second polymer. Reference claim 46 discloses that the materials are melted together.

Appellant argues that the Desai reference does not disclose that the continuous phase contains polyvinyl chloride. Paragraph 0025 of the reference discloses that the thermoplastic material can be polyvinyl chloride.

Art Unit: 1794

Appellant argues that the Desai reference does not disclose that the continuous phase contains polyethylene. Paragraph 0025 of the Desai reference discloses that the thermoplastic material can be polyethylene. Additionally, Desai discloses that the recycled product has at least one thermoplastic material, which includes more than one thermoplastic material.

Appellant argues that the Desai reference does not disclose that the matrix contains dioctyl phthalate. It is disclosed in paragraph 0026 that the matrix contains an alkyl phthalate with a C5-C12 carbon.

Appellant argues that the Desai reference does not disclose that the matrix contains 45-85% polyvinyl chloride. Desai discloses that the material contains up to 100% of recycled material, which includes the at least one thermoplastic material (polyvinyl chloride).

Appellant argues that Desai does not disclose either expressly or inherently carpet pieces having a fiber length of 1/8 to 2 inches. Paragraph 0031 of the Desai reference discloses that the face fibers of the carpet waste have lengths from 1' to 2'' (also see reference claim 39. Paragraph 0035 of the Desai reference also discloses that the material comprises at least one plasticizer.

Appellant argues that the Desai reference does not expressly or inherently disclose a continuous phase of a first and second polymer including polyamide fibers, polyester fibers or mixtures thereof. It is disclosed in paragraph 0035 that material comprises polyester fibers which are used to form a continuous layer. Paragraphs 0025-0026 of the Desai reference discloses that the thermoplastic material can be a blend. Paragraph 0024 of the Desai reference discloses that the recycled material is post consumer waste. Paragraph 0030 of the reference discloses that the face fiber from the recycled carpet waste can be present in the amount of at least 50% as per instant claim 43. Paragraph 0035 of the reference discloses that the material can

Art Unit: 1794

contain at least one inorganic filler. Table 1 of the reference discloses the amount present of the filler as required by the present claims.

Appellant argues that the combination of the Desai and Young references do not suggest present claims 49-58. Desai discloses the recycled material as claimed in the present claims with a first and second polymer fused forming a continuous layer. Desai does not disclose that the waste recycled material is fed into an extruder. Young discloses a polymeric blend formed of recycled carpet waste. Young discloses that the waste carpet scrap material is feed into an extruder and heated to about 204 degrees in order to melt the carpet blend into a polymeric material. Young was brought in to show that recycled waste carpet scraps can be fed into an extruder to yield a polymeric material from the melting of a first and second polymer. Feeding the recycled waste scraps into an extruder reduces thermal degradation of the polymeric material. The combination of the Desai and Young references is analogous art and there is motivation to combine them.

Art Unit: 1794

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,
/Camie S. Thompson/
Patent Examiner, Art Unit 1794

Conferees:
/D. Lawrence Tarazano/
Supervisory Patent Examiner, Art Unit 1794

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794